

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

**LAPANDAY DIVERSIFIED
PRODUCTS CORP.,**

Petitioner,

- versus -

CTA CASE NO. 9951

Members:

**DEL ROSARIO, P.J., Chairperson,
MANAHAN, and
REYES-FAJARDO, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

AUG 10 2022 *10:43 am*

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Lapanday Diversified Products Corp. on October 15, 2018, praying that the Court: (i) declare as void the Letter of Denial dated February 12, 2018 issued by respondent Commissioner of Internal Revenue; and, (ii) direct respondent to issue a tax credit certificate/s in the aggregate amount of Nineteen Million Nine Hundred Fifty-Five Thousand Thirty-Eight Pesos and 34/100 (P19,955,038.34) in favor of petitioner, representing the latter's unutilized input taxes on the purchase of goods and services attributable to its zero-rated sales for the four (4) quarters of taxable year 2007.

THE PARTIES

Petitioner Lapanday Diversified Products Corp. is a domestic corporation duly organized and registered under the laws of the Republic of the Philippines, with Company Registration No. A2000017347, with principal address at Maryknoll Road, Bo. Pampanga, Lanang, Davao City. It is represented by its Chief Financial Officer, Mr. Manolito B. Dagatan. Petitioner may be served with notices and other court processes thru its counsel Zambrano

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Gruba Caganda and Advincula Law Offices, with address at 27th Floor, 88 Corporate Center, Sedeño Street, Salcedo Village, Makati City 1227.¹

Petitioner is a VAT-registered company engaged in the production and export of fruits and other agricultural products.²

Respondent is being sued as the Commissioner of Internal Revenue (CIR), having been duly appointed and empowered to perform the duties of the office, including, among others, the duty to act on and approve claims for refund as provided by law. Respondent may be served with summons, notices, and other court processes at BIR National Office Building, Diliman, Quezon City, Metro Manila.³

THE FACTS

For the four (4) quarters of taxable year 2007, petitioner filed with the Bureau of Internal Revenue its Quarterly Value-Added Tax (VAT) Returns (BIR Form No. 2550Q), on the following dates:

Period Covered	Return Filed On	Annex
1 st Quarter	April 25, 2007	"P-4" ⁴
2 nd Quarter	July 25, 2007	"P-5" ⁵
3 rd Quarter	September 10, 2009	"P-6" ⁶
4 th Quarter	September 10, 2009	"P-7" ⁷

On April 2, 2008, an Application for Tax Credit/Refund of Value-Added Tax Paid was filed by petitioner before the Bureau of Internal Revenue (BIR) covering the periods January 1, 2007 to March 31, 2007 and April 1, 2007 to June 30, 2007.⁸

On September 30, 2008, petitioner filed another Application for Tax Credit/Refund of Value-Added Tax Paid covering the periods July

¹ Par. 1, Joint Stipulation of Facts and Issues (JSFI), *CTA Docket*, p. 292; Par. 1, Summary of Admitted Fact, Pre-Trial Order, *CTA Docket*, p. 338.

² Par. 4, JSFI, *CTA Docket*, p. 293; Par. 4, Summary of Admitted Fact, Pre-Trial Order, *CTA Docket*, p. 338.

³ Par. 2, JSFI, *CTA Docket*, pp. 292 to 293; Par. 2, Summary of Admitted Fact, Pre-Trial Order, *CTA Docket*, p. 338.

⁴ *CTA Docket*, p. 235.

⁵ *CTA Docket*, p. 236.

⁶ *CTA Docket*, p. 237.

⁷ *CTA Docket*, p. 238.

⁸ Par. 2, Petition for Review, *CTA Docket*, p. 12; Judicial Affidavit of Luzviminda T. Aguilar dated April 2, 2019, *CTA Docket*, p.148.

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1, 2007 to September 30, 2007 and October 1, 2007 to December 31, 2007.⁹

On September 14, 2018, petitioner received a Letter of Denial dated February 12, 2018 from the BIR.¹⁰

On October 15, 2018, petitioner filed the present Petition for Review.¹¹

On February 11, 2019, respondent filed an "Answer",¹² raising the following Special and Affirmative Defenses: (i) the Court has no jurisdiction over the present Petition for Review; (ii) the CIR's "deemed denial" decision has become final and unappealable; (iii) petitioner failed to substantiate its claim for refund; and, (iv) claims for refund are construed strictly against the taxpayer and in favor of the government.

On April 5, 2019, petitioner filed its "Pre-Trial Brief"¹³; while respondent filed a "Pre-Trial Brief"¹⁴ on June 10, 2019.

The Pre-Trial Conference was held on June 13, 2019.¹⁵ The parties filed their Joint Stipulation of Facts and Issues¹⁶ on June 27, 2019. The Pre-Trial Order¹⁷ was issued on August 8, 2019. The Court also terminated the Pre-Trial in the same Order.

During trial, petitioner presented testimonial and documentary evidence. Petitioner's formally offered exhibits, as contained in its "Formal Offer of Evidence"¹⁸ filed on November 14, 2019, were admitted in the Resolutions dated January 30, 2020¹⁹ and November 19, 2020²⁰ except for Exhibits "P-4", "P-5", "P-6", "P-7", "P-34", "P-40-0089", "P-40-0128", and "P-42-0059".

⁹ Par. 3, *id.*

¹⁰ "P-1", *CTA Docket*, pp. 153 to 154.

¹¹ *CTA Docket*, pp. 12 to 27.

¹² *CTA Docket*, pp. 68 to 85.

¹³ *CTA Docket*, pp. 104 to 115.

¹⁴ *CTA Docket*, pp. 273 to 277.

¹⁵ Order issued on June 13, 2019; *CTA Docket*, pp. 281 to 285.

¹⁶ *CTA Docket*, pp. 292 to 298.

¹⁷ *CTA Docket*, pp. 337 to 343.

¹⁸ *CTA Docket*, pp. 478 to 495.

¹⁹ *CTA Docket*, pp. 529 to 533.

²⁰ *CTA Docket*, pp. 604 to 612.

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Respondent, also presented documentary and testimonial evidence. The formally offered exhibits, as contained in respondent's "Formal Offer of Evidence"²¹ filed on July 22, 2021, were admitted by the Court in its November 3, 2019 Resolution.²²

After noting the filing of petitioner's "Memorandum"²³ on February 10, 2022 and respondent's failure to submit memorandum,²⁴ the case was submitted for decision on March 14, 2022.²⁵

THE ISSUES

The issues for consideration of the Court, as stipulated by the parties, are as follows:

- I. Whether or not the Court has jurisdiction over the case; and,
- II. Whether or not petitioner is entitled to the claim for VAT Credit in the aggregate amount of ₱19,955,038.34 representing unutilized input taxes on the purchase of goods and services on account of zero-rated sales for the taxable year 2007 pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.²⁶

THE PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner raises the following arguments:

1. Petitioner is engaged in the production and export of fruits and other agricultural products, and its export sales are classified as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended;
2. Petitioner has substantiated its entitlement to refund/tax credit;

²¹ CTA Docket, pp. 629 to 634.

²² CTA Docket, pp. 648 to 649.

²³ CTA Docket, pp. 650 to 672.

²⁴ Records Verification dated February 24, 2022, CTA Docket, p. 675.

²⁵ CTA Docket, p. 677.

²⁶ Par. 5, JSFI, CTA Docket, p. 293; Issues, Pre-Trial Order, CTA Docket, p. 338.

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3. Petitioner availed of the alternative remedy provided under Section 112(C) of the NIRC of 1997, as amended;
4. The BIR's ruling that "petitioner's application for a tax refund was automatically denied when the period of 120 days expired ("deemed denied decision") pursuant to the retroactive application of Revenue Memorandum Circular (RMC) No. 54-2014" is in violation of Section 246 of the NIRC of 1997, as amended;
5. There are two (2) separate and distinct alternative remedies as to when to file a judicial claim. It may be filed within 30 days from either the (i) denial or partial denial of the administrative claim; or, (ii) the end of the 120-day waiting period ("deemed denial decision"); and,
6. There are four (4) scenarios contemplated by Section 112(C) of the NIRC of the 1997, as amended: (i) The CIR issues a decision before/within the 120 days; (ii) CIR issues a decision on the 120th day; (iii) CIR does not issue a decision within 120 days; and, (iv) CIR issues a decision after the 120th day. Petitioner avers that the scenario in this case is the fourth one where the CIR issued the Letter of Denial after the 120th day.

Respondent's arguments

Respondent counter-argues the following:

1. The Petition for Review was filed out of time; hence, the Court has no jurisdiction over it;
2. Since the Petition for Review was filed late, the "deemed denial" decision of respondent has become final and unappealable;
3. Assuming the Court has jurisdiction over the case, petitioner's failure to substantiate its claim for refund at the administrative level cannot be cured by the introduction of new evidence before the Court; and,
4. Claims for refund are construed strictly against the taxpayer and in favor of the government.



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THE COURT'S RULING

The crux of the controversy is whether the Court has jurisdiction to take cognizance of the present Petition for Review which appeals the BIR's Letter of Denial dated February 12, 2018.

Section 112(A) and (C) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337, provides for the legal basis to claim for refund or issuance of a tax credit certificate of input VAT, including the taxpayer's remedy to appeal to the Court of Tax Appeals (CTA) the adverse decision or the inaction of the CIR, viz.:

"SEC. 112. Refunds or Tax Credits of Input Tax. —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx

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(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application** filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals." (Boldfacing supplied)

Section 112(C) of the NIRC of 1997, as amended, speaks of two (2) periods:

(1) the 120-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and,



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(2) the 30-day period, which refers to the period for filing a judicial claim with the CTA.²⁷

Contrary to petitioner's claim that the aforesaid 120+30-day period is merely directory and non-jurisdictional, jurisprudence is replete with cases which hold that the 120+30-day period is mandatory and jurisdictional.²⁸

Complementing Section 112 of the NIRC of 1997, as amended, is RA No. 1125, as amended, conferring exclusive appellate jurisdiction to CTA to review on appeal decision or inaction of the CIR in cases involving refunds of internal revenue taxes, viz.:

"Sec. 7. Jurisdiction. — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;"

RA No. 1125, as amended, categorically states that a party adversely affected by a decision or inaction of the CIR may file an appeal before the CTA within thirty (30) days after the receipt of such decision or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2).²⁹

Stated otherwise, the taxpayer may file the appeal within thirty (30) days after the CIR denies the administrative claim within the 120-

²⁷ *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

²⁸ *Commissioner of Internal Revenue vs. San Roque Power Corporation* (G.R. No. 187485), *Taganito Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 196113) and *Philex Mining Corporation vs. Commissioner of Internal Revenue* (G.R. No. 197156) February 12, 2013; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

²⁹ Sec. 11, RA No. 1125 as amended by RA No. 9282.

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day waiting period, or it may file the appeal within thirty (30) days from the expiration of the 120-day period if there is inaction on the part of the CIR.³⁰ It bears to emphasize, however, that the judicial claim must be filed within a period of thirty (30) days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, **whichever is sooner**.³¹

The inaction of the CIR on a claim during the 120-day period is, by express provision of law, "**deemed a denial**" of a claim, and the taxpayer has thirty (30) days from the expiration of the 120-day period to file its judicial claim with the CTA; otherwise, its failure to do so renders the "deemed a denial" decision of the CIR final and unappealable.³²

When the 120-day period lapses and there is inaction on the part of the CIR, **taxpayer must no longer wait for the CIR to come up with a decision as the inaction is the decision itself**. By operation of law, the refund claim is deemed denied by the CIR's inaction. Thus, the taxpayer must file an appeal within thirty (30) days from the lapse of the 120-day waiting period.³³ Any claim filed beyond the 120+30-day period provided by the NIRC is outside the jurisdiction of the CTA.³⁴

Records submitted by petitioner disclose the following relevant dates showing the time when the return and administrative claims were filed, as well as the end of the two (2) year period to file its claim:

Period of Sales (2007)	End of the Quarter	Date Return was filed ³⁵	Date of Administrative Claim ³⁶	End of two (2) year period to file claim
1 st Quarter	March 31, 2007	April 25, 2007	April 2, 2008	March 31, 2009
2 nd Quarter	June 30, 2007	July 25, 2007	April 2, 2008	June 30, 2009
3 rd Quarter	September 30, 2007	September 10, 2009	September 30, 2008	September 30, 2009
4 th Quarter	December 31, 2007	September 10, 2009	September 30, 2008	December 31, 2009

³⁰ *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015, citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013.

³¹ *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 02, 2016.

³² *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.

³³ *Supra* Note 27.

³⁴ *Supra* Note 31.

³⁵ Exhibits P-36, P-37, P-38, and P-39, ICPA Report; for the 3rd and 4th quarters, petitioner filed an Amended Return.

³⁶ Judicial Affidavit of Lizlynne Joy R. Dael dated April 8, 2019, CTA Docket, p. 219.

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Based on the illustration above, petitioner had until March 31, 2009, June 30, 2009, September 30, 2009, and December 31, 2009 within which to file its administrative claims for refund for the 1st, 2nd, 3rd, and 4th quarters of 2007, respectively, reckoned from the end of each quarter. Records show that petitioner filed its administrative claims for refund on April 2, 2008 for the 1st and 2nd quarters, and September 30, 2008 for the 3rd and 4th quarters. Thus, petitioner filed its administrative claims for refund within the period prescribed by law.

With respect to the timeliness of the judicial claim, the Court needs to ascertain the expiry of the 120-day period as the said period is crucial in filing an appeal with the CTA.³⁷ The running of the 120-day period is reckoned from the date of submission of complete documents in support of the application for refund or issuance of tax credit pursuant to the first paragraph of Section 112(C) of the NIRC of 1997, as amended. The taxpayer, however, is not without any limitation as to the period of submission of complete documents in support of its claim. The teachings in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,³⁸ is most enlightening, viz.:

"With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining when the supporting documents have been completed - it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. **After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.**

The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms what additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all

³⁷ *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.

³⁸ G.R. No. 207112, December 8, 2015.



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documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

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Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. Again, notice, by way of a request from the tax collection authority to produce the complete documents in these cases, is essential.

Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.

To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing." (Boldfacing and underscoring supplied)

Pursuant to the summary laid down in *Pilipinas Total*, the **120-day period** may be reckoned from any of the following dates, whichever may be applicable:

1. **Date of filing the administrative claim** in cases where submission of complete documents was made upon such filing, or when the taxpayer plainly manifests that it no longer

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wishes to submit any other additional documents to complete its administrative claim; or

2. **Date of submission of documents**, which may be made within 30 days from the date of filing of the taxpayer's administrative claim, unless given further extension by the CIR; or
3. **Date of expiration of 30 days** from filing of the administrative claim, when complete documents did not accompany the administrative claim.

In its Petition, petitioner alleges that it fully complied with all the necessary requirements to substantiate its claim; that it never received any notice from respondent that the documents it submitted did not fully comply with the requirements laid down under the law and pertinent regulations until its receipt of the BIR's Letter of Denial; and that it has been made to believe by the respondent that its submissions fully complied with the requirements and were complete and sufficient to support its VAT credit application.³⁹ Respondent, on the other hand, did not present any evidence to prove that petitioner received any request for additional documents.

Considering the aforesaid allegations, and the presumption that the complete documents accompanied the claim (absent any showing that the taxpayer received any request from respondent to submit additional documents or actually submitted additional documents after the filing of the administrative claim),⁴⁰ the 120-day period is reckoned from the date of filing of petitioner's administrative claims:

Taxable Quarter	Date of Filing of Administrative Claim	End of 120 Day Period	End of 30-day Period from Lapse of the 120-day Period
1 st Quarter	April 2, 2008	August 1, 2008	August 31, 2008
2 nd Quarter	April 2, 2008	August 1, 2008	August 31, 2008
3 rd Quarter	September 30, 2008	January 29, 2009	February 28, 2009
4 th Quarter	September 30, 2008	January 29, 2009	February 28, 2009

The 120-day period started to run from the time the administrative claim was filed. Due to respondent's inaction within the 120-day period, there is a "deemed denial decision". Petitioner should have appealed the "deemed denial decision" by filing its Petition for Review before this Court not later than **August 31, 2008** for the 1st

³⁹ Par. 41, Petition for Review, CTA Docket, pp. 22-23.

⁴⁰ *Supra* Note 31.



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and 2nd quarters, and **February 28, 2009** for the 3rd and 4th quarters for the taxable year 2007. The filing of the present Petition for Review on **October 15, 2018**, was made beyond the period prescribed by law. As this Court has no jurisdiction to take cognizance of the Petition for Review, the only power left with this Court is to dismiss the case.

In light of the foregoing, the Court will no longer belabor the other issues raised in the present Petition for Review.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Lapanday Diversified Products Corp. on October 15, 2018 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:


CATHERINE T. MANAHAN
Associate Justice


MARIAN IVY E. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice